

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
E\*TRADE FINANCIAL CORPORATION and :  
E\*TRADE SECURITIES LLC, :  
:

Plaintiffs, :  
:

v. :  
:

No. 08 CV 2993 (RJH)

MARCUS J. HERNANDEZ, :  
SEAN J. GAFFEY, and :  
BANC OF AMERICA :  
INVESTMENT SERVICES, INC. :

Defendants. :  
----- X

**DECLARATION OF EDWARD MINER IN  
SUPPORT OF E\*TRADE'S REPLY MEMORANDUM**

Edward Miner declares as follows pursuant to 28 U.S.C. § 1746:

1. I have been employed on a contract basis by E\*TRADE Securities, LLC  
("E\*TRADE") since 2006 and full-time by E\*TRADE since January 7, 2007 as an Operations  
Analyst in the Oversight and Supervision Department.

2. As an Operations Analyst, my duties include assisting in the review of  
interactions between E\*TRADE employees and clients for compliance with company policies  
and industry regulations.

**E\*TRADE's Recording of Client Calls**

3. It is E\*TRADE's practice to conduct all conversations between E\*TRADE clients  
and E\*TRADE representatives on a recorded line (a "Recording") so that the content of these  
conversations can be retrieved if needed. This policy includes recording telephone calls made by  
E\*TRADE representatives to clients following the departure of a Financial Advisor.

4. E\*TRADE's policy to record calls with clients is disclosed to the clients at the commencement of each call.

5. These Recordings are in the form of digital audio files. They are logged into a database and are stored indefinitely on E\*TRADE's computer network.

6. Authorized E\*TRADE personnel can search for and retrieve Recordings by entering a number of search criteria into the database. Following a search, the Recordings can be played back on computers connected to E\*TRADE's computer network or can be saved onto transferable media such as a compact disc.

7. In connection with my employment, I am on occasion called upon to locate and retrieve Recordings in the manner described above.

**Recordings of Conversations Concerning Gaffey and Hernandez**

8. At the direction of E\*TRADE counsel, I or other E\*TRADE employees at my direction, located on E\*TRADE's Recording database the Recordings of telephone conversations between E\*TRADE representatives and the following clients relating to former Financial Advisor *Sean J. Gaffey*:

- (a) E\*TRADE Client xxxx-2528 (Transcript attached as Exhibit 1).
- (b) E\*TRADE Client xxxx-3460 (Transcript attached as Exhibit 2).
- (c) E\*TRADE Client xxxx-7400 (Transcript attached as Exhibit 3).

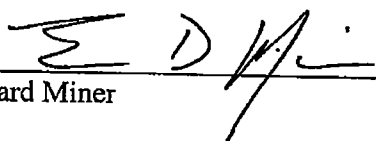
9. At the direction of E\*TRADE counsel, I or other E\*TRADE employees at my direction, located on E\*TRADE's Recording database the Recordings of telephone conversations between E\*TRADE representatives and the following clients relating to former Financial Advisor *Marcus J. Hernandez*:

- (a) E\*TRADE Client xxxx-0977 (Transcript attached as Exhibit 4).

(b) E\*TRADE Client xxxx-6453 (Transcript attached as Exhibit 5).

10. After I or other E\*TRADE employees at my direction located and retrieved these five Recordings, I caused them to be recorded onto a transferable medium and sent to a Registered Professional Court Reporter to prepare a transcript of the calls (the "Transcripts").

Executed this 11<sup>th</sup> day of April, 2008, at New York, NY.

  
\_\_\_\_\_  
Edward Miner

# **EXHIBIT 1**

E\*TRADE Client (XXXX-2528)

April 9, 2008

Telephonic Conversation

1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -  
E\*TRADE FINANCIAL CORPORATION     )  
and E\*TRADE SECURITIES LLC,        )  
  Plaintiffs,     )  
  
  v.                     ) No. 08 CV 2993 (RJH)  
  
MARCUS J. HERNANDEZ, SEAN J.        )  
GAFFEY, and BANC OF AMERICA        )  
INVESTMENT SERVICES, INC.,         )  
  Defendants.        )  
  
- - - - -

Transcription of a taped telephone conversation  
between E\*TRADE Client XXXX-2528 and a representative  
of E\*TRADE FINANCIAL CORPORATION, recorded on an  
unknown date, transcribed by Jonathan Wonnell, a  
Registered Professional Court Reporter and Notary  
Public of the District of Columbia.

Henderson Legal Services, Inc.

202-220-4158

[www.hendersonlegalservices.com](http://www.hendersonlegalservices.com)

E\*TRADE Client (XXXX-2528)

April 9, 2008

## Telephonic Conversation

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 PROCEEDINGS</p> <p>2 E*TRADE REP 1: Mr. (Client XXXX-2528)?</p> <p>3 CLIENT XXXX-2528: Yes.</p> <p>4 E*TRADE REP 1: Thanks for holding. I've</p> <p>5 got Steve on the line for you.</p> <p>6 CLIENT XXXX-2528: Thank you.</p> <p>7 E*TRADE REP 2: Hi, Mr. (Client XXXX-2528).</p> <p>8 How can I help you today? This is Steve Zieba [phon.].</p> <p>9 CLIENT XXXX-2528: Yeah. Hi there. I</p> <p>10 wanted to talk to you for a minute about a call I had</p> <p>11 this morning from Sean Gaffey.</p> <p>12 E*TRADE REP 2: Oh, okay.</p> <p>13 CLIENT XXXX-2528: He was calling to</p> <p>14 basically try to incent me to join -- move my accounts</p> <p>15 to his company.</p> <p>16 E*TRADE REP 2: Okay.</p> <p>17 CLIENT XXXX-2528: And I don't know if he</p> <p>18 had a noncompete clause with you folks, but I thought</p> <p>19 you would want to know that.</p> <p>20 E*TRADE REP 2: Oh. Absolutely. Yeah.</p> <p>21 CLIENT XXXX-2528: And he was pretty hard</p> <p>22 about it in terms of -- he basically seems to think</p>	<p style="text-align: right;">3</p> <p>1 you guys are heading for bankruptcy or laying on big</p> <p>2 numbers around notes coming due and all this -- what</p> <p>3 do you call it -- the CDOs and all that. I mean, it</p> <p>4 was really a hard sell.</p> <p>5 E*TRADE REP 2: Mm-hmm.</p> <p>6 CLIENT XXXX-2528: And I was actually a</p> <p>7 little offended. So I thought you'd want to know</p> <p>8 that. But the flip side of it is that I tried to call</p> <p>9 him on Friday morning --</p> <p>10 E*TRADE REP 2: Okay.</p> <p>11 CLIENT XXXX-2528: -- while he was still an</p> <p>12 employee to place a trade and he never returned my</p> <p>13 call and that cost me about another maybe \$500 or so</p> <p>14 on a bond trade.</p> <p>15 E*TRADE REP 2: Oh. Okay.</p> <p>16 CLIENT XXXX-2528: And I'm not happy about</p> <p>17 that either. So I'm not demanding anything, but he</p> <p>18 was your employee at the time still.</p> <p>19 E*TRADE REP 2: Mm-hmm.</p> <p>20 CLIENT XXXX-2528: So I thought I would</p> <p>21 kind of just mention both of these. They're kind of</p> <p>22 the same issue, his mode of departure.</p>
<p style="text-align: right;">4</p> <p>1 E*TRADE REP 2: Okay. Was this just this</p> <p>2 past Friday?</p> <p>3 CLIENT XXXX-2528: Yes.</p> <p>4 E*TRADE REP 2: Okay. Hmm. I'm trying to</p> <p>5 think when he actually left the firm. I'm thinking it</p> <p>6 might have been the middle of last week. He might not</p> <p>7 have actually been with us at that point.</p> <p>8 CLIENT XXXX-2528: Oh. That's strange,</p> <p>9 because his voice mail was still working.</p> <p>10 E*TRADE REP 2: Yeah. That's often the</p> <p>11 case. They don't get to it right away. I think it</p> <p>12 was actually towards the middle of last week that he</p> <p>13 actually -- was his last day, so --</p> <p>14 CLIENT XXXX-2528: I'm pretty sure I spoke</p> <p>15 to him Wednesday, because I believe -- isn't that the</p> <p>16 day I called and asked you about the conversion offer</p> <p>17 on that bond?</p> <p>18 E*TRADE REP 2: Right. Because I put</p> <p>19 you --</p> <p>20 CLIENT XXXX-2528: What happened is I spoke</p> <p>21 to him and he didn't have the information and</p> <p>22 suggested I talk to somebody on the client team, which</p>	<p style="text-align: right;">5</p> <p>1 is when I called you.</p> <p>2 E*TRADE REP 2: Okay.</p> <p>3 CLIENT XXXX-2528: And then I got the</p> <p>4 information and thought about it some and called him</p> <p>5 back -- or tried to call him back to place the trade</p> <p>6 and got his voice mail as has happened in the past.</p> <p>7 And normally he's been reasonably prompt in getting</p> <p>8 back to me or if he's not in, if he's on vacation or</p> <p>9 something he was normally pretty good about leaving</p> <p>10 that message on his voice mail.</p> <p>11 So then it was that Friday morning that I</p> <p>12 left a message and didn't hear back from him all day</p> <p>13 and then by the time I realized that the market was</p> <p>14 closed I called back and made the trade on Monday and</p> <p>15 by then the price on those bonds had deteriorated a</p> <p>16 bit further.</p> <p>17 E*TRADE REP 2: Right. Right. Well, I</p> <p>18 certainly appreciate your input here. I'll definitely</p> <p>19 forward this on to the management. And like I said, I</p> <p>20 don't know the exact time he left. He was in a</p> <p>21 complete different department and even a different</p> <p>22 city from where I am. But I do -- yeah, I do know --</p>

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E\*TRADE Client (XXXX-2528)

April 9, 2008

## Telephonic Conversation

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 this week, though, you were able to get through to Vin 2 Sica [phon.] and he was able to help you out? 3 CLIENT XXXX-2528: Yeah. Basically when 4 Gaffey didn't call me back I called a group, just like 5 I'm calling this number, and asked to be connected 6 with fixed income. And actually, I think I actually 7 asked for Sean by name and was told at that point that 8 he was no longer an employee. 9 And that's when they connected me with 10 Sica, you know, who did what he was supposed to at the 11 time. But again, my inability -- the lack of being 12 informed that Steve was no longer there basically 13 prevented me from executing that trade on Friday when 14 I would have gotten a better price. 15 E*TRADE REP 2: Right. Sean, in other 16 words Sean Gaffey was no longer there on Friday. I'll 17 definitely go ahead and forward that as an issue there 18 to let them know you think it probably was about \$500 19 difference -- 20 CLIENT XXXX-2528: Yeah. It was about a 21 half a point difference. They can look at what the 22 market was on Friday and then again on Monday.</p>	<p style="text-align: right;">7</p> <p>1 E*TRADE REP 2: Okay. Do you remember what 2 time on Friday you called in to leave the message? 3 Was it the morning or afternoon or -- 4 CLIENT XXXX-2528: Yeah. I wanted to make 5 the trade. I called them 9:00 or 10:00 Central Time. 6 E*TRADE REP 2: Okay. Around 9:00 or 10:00 7 Eastern Time? 8 CLIENT XXXX-2528: The call is probably 9 still on his voice mail. 10 E*TRADE REP 2: Yeah. I wouldn't doubt it. 11 CLIENT XXXX-2528: Look, it's not a how 12 many amount of money. It's just an annoyance. 13 E*TRADE REP 2: Okay. All right. 14 Absolutely. Well, I'll let them at least know about 15 it so that there's a record of it. Because certainly 16 he should have -- if he had been there certainly he 17 should have contacted you and let you know. 18 CLIENT XXXX-2528: I'd be happy with some 19 number of free trades or something like that to 20 compensate -- of course not compensate, but -- that's 21 a suggestion. 22 E*TRADE REP 2: Sure. Let me see what I</p>
<p style="text-align: right;">8</p> <p>1 can do for you. I probably won't have a response for 2 you tonight. 3 CLIENT XXXX-2528: No rush. I'm traveling. 4 But I thought it was -- most people in sales in that 5 kind of a situation aren't in a position to go solicit 6 former clients. And I just didn't like that. 7 E*TRADE REP 2: And he called you today to 8 try and get you -- 9 CLIENT XXXX-2528: Yeah. This morning on 10 my cell phone. 11 E*TRADE REP 2: Okay. All right. Well, I 12 appreciate the input. And let me see what I can do 13 for you here in regards to that. I do apologize for 14 what happened there too. But let me see what we can 15 do to try to help you out here. Okay? 16 CLIENT XXXX-2528: I appreciate it. Thanks 17 a lot. 18 E*TRADE REP 2: Have a nice day. 19 CLIENT XXXX-2528: You too. Bye. 20 (Call ends.) 21 22</p>	<p style="text-align: right;">9</p> <p>1 UNITED STATES OF AMERICA ) 2 3 DISTRICT OF COLUMBIA ) 4 I, JONATHAN WONNELL, a Notary Public in and 5 for the District of Columbia, do hereby certify that 6 the within transcript is a true and accurate record of 7 the taped telephone conversation as provided by 8 counsel in the above-entitled matter. 9 I further certify that I am not a relative, 10 employee, attorney or counsel of any of the parties to 11 this action and that I am in no way interested in the 12 outcome of this matter. 13 IN WITNESS WHEREOF, I have hereunto set my 14 hand this _____ day of _____, 2008. 15 16 17 18 _____ 19 JONATHAN WONNELL 20 21 My Commission expires: 22 October 1, 2012</p>

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E\*TRADE Client (XXXX-2528)

Telephonic Conversation

9

1 UNITED STATES OF AMERICA )

2

3 DISTRICT OF COLUMBIA )

4 I, JONATHAN WONNELL, a Notary Public in and  
5 for the District of Columbia, do hereby certify that  
6 the within transcript is a true and accurate record of  
7 the taped telephone conversation as provided by  
8 counsel in the above-entitled matter.

9 I further certify that I am not a relative,  
10 employee, attorney or counsel of any of the parties to  
11 this action and that I am in no way interested in the  
12 outcome of this matter.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 14<sup>th</sup> day of April, 2008.

15

16

17

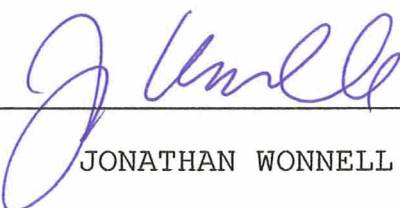
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19

20

21 My Commission expires:

22 October 1, 2012

  
JONATHAN WONNELL

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# **EXHIBIT 2**

E\*TRADE Client (XXXX-3460)

April 9, 2008

Telephonic Conversation

1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -  
E\*TRADE FINANCIAL CORPORATION     )  
and E\*TRADE SECURITIES LLC,        )  
  Plaintiffs,     )  
  
  v.                     ) No. 08 CV 2993 (RJH)  
  
MARCUS J. HERNANDEZ, SEAN J.        )  
GAFFEY, and BANC OF AMERICA        )  
INVESTMENT SERVICES, INC.,         )  
  Defendants.        )  
  
- - - - -

Transcription of a taped telephone conversation  
between E\*TRADE Client XXXX-3460 and a representative  
of E\*TRADE FINANCIAL CORPORATION, recorded on February  
27, 2008, transcribed by Jonathan Wonnell, a  
Registered Professional Court Reporter and Notary  
Public of the District of Columbia.

Henderson Legal Services, Inc.

202-220-4158

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E\*TRADE Client (XXXX-3460)

April 9, 2008

## Telephonic Conversation

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 PROCEEDINGS</p> <p>2 SECRETARY: (Company).</p> <p>3 E*TRADE REP: Hi. (Client XXXX-3460)</p> <p>4 please? This is Richard with E*TRADE.</p> <p>5 SECRETARY: One second.</p> <p>6 E*TRADE REP: Thanks.</p> <p>7 CLIENT XXXX-3460: Hello?</p> <p>8 E*TRADE REP: Hi, (Client XXXX-3460).</p> <p>9 Richard Gilbert calling with E*TRADE. How are you?</p> <p>10 CLIENT XXXX-3460: Okay. How are you?</p> <p>11 E*TRADE REP: Good. Good. I wanted to</p> <p>12 touch base. It looks like all the service work has</p> <p>13 been done on all the different accounts that you have.</p> <p>14 And I wanted to let you know it is done and check in</p> <p>15 and see what you're thinking about how things stand</p> <p>16 right now.</p> <p>17 CLIENT XXXX-3460: Well, your guy quit.</p> <p>18 E*TRADE REP: So you knew that already?</p> <p>19 CLIENT XXXX-3460: Yeah. He called me.</p> <p>20 E*TRADE REP: He did?</p> <p>21 CLIENT XXXX-3460: Yeah. He called me</p> <p>22 after he was over at Bank of America or wherever the</p>	<p style="text-align: right;">3</p> <p>1 hell he is.</p> <p>2 E*TRADE REP: Okay. Was he soliciting</p> <p>3 business with you? Because that's one of the reasons</p> <p>4 I was calling you was to find out -- is to give you</p> <p>5 your new contact here.</p> <p>6 CLIENT XXXX-3460: Yeah. He was -- I mean,</p> <p>7 obviously. What do you think he was doing?</p> <p>8 E*TRADE REP: Yeah. Hmm. Interesting.</p> <p>9 Not supposed to do that. Are you making a move or --</p> <p>10 CLIENT XXXX-3460: No, I didn't make a</p> <p>11 move.</p> <p>12 E*TRADE REP: Okay, good. I've got a</p> <p>13 gentleman that's actually from Minnesota. His name is</p> <p>14 Jonathan Merickel. It's M-e-r-i-c-k-e-l. I can spell</p> <p>15 this information again. And Jonathan is -- I talked</p> <p>16 to him about a half an hour ago and we kind of looked</p> <p>17 through your account just to make sure he was familiar</p> <p>18 in case you had questions. And I thought, you know</p> <p>19 what, he was certainly willing to give you a call. I</p> <p>20 thought, you know, I'd give you a call here and see</p> <p>21 what you're thinking. I'm going to see if he's</p> <p>22 available.</p>
<p style="text-align: right;">4</p> <p>1 CLIENT XXXX-3460: What's his name?</p> <p>2 E*TRADE REP: It's Jonathan or Jon. The</p> <p>3 last name is Merickel. It's M-e-r-i-c-k-e-l. Yup.</p> <p>4 He's there. So certainly -- and he gave me his</p> <p>5 extension. Do you have a minute that I can conference</p> <p>6 him in here? I just want to give you your new contact</p> <p>7 in case you have questions.</p> <p>8 CLIENT XXXX-3460: Actually, can you give</p> <p>9 me his number? I'm supposed to go to a meeting right</p> <p>10 down the hall here, so --</p> <p>11 E*TRADE REP: Okay. Let me get it -- the</p> <p>12 outside line here. Bear with me. I've got his</p> <p>13 extension right in front of me, but bear with me.</p> <p>14 Okay. It's 866-789-0712. Jon is a great guy. I</p> <p>15 think --</p> <p>16 CLIENT XXXX-3460: Where is he out of? Is</p> <p>17 he in New York?</p> <p>18 E*TRADE REP: Chicago.</p> <p>19 CLIENT XXXX-3460: Oh, Chicago?</p> <p>20 E*TRADE REP: Yup. He's from the</p> <p>21 Minneapolis area.</p> <p>22 CLIENT XXXX-3460: Okay.</p>	<p style="text-align: right;">5</p> <p>1 E*TRADE REP: And he's more than welcome to</p> <p>2 meet with you here or after hours if need be, he said.</p> <p>3 So -- yeah, I think you'll like Jonathan. He's very</p> <p>4 sharp.</p> <p>5 CLIENT XXXX-3460: Can you ask him to call</p> <p>6 me?</p> <p>7 E*TRADE REP: Absolutely.</p> <p>8 CLIENT XXXX-3460: Or should I call him?</p> <p>9 Do I need an extension number? Probably not.</p> <p>10 E*TRADE REP: Well, no. It says direct</p> <p>11 dial.</p> <p>12 CLIENT XXXX-3460: All right. Well, I'll</p> <p>13 give him a call as soon as I get out of this meeting.</p> <p>14 Okay?</p> <p>15 E*TRADE REP: Okay. Sounds good.</p> <p>16 CLIENT XXXX-3460: Yup. Bye.</p> <p>17 (Call ends.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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E\*TRADE Client (XXXX-3460)

April 9, 2008

Telephonic Conversation

3 (Page 6)

<p>1 UNITED STATES OF AMERICA ) 2 3 DISTRICT OF COLUMBIA ) 4 I, JONATHAN WONNELL, a Notary Public in and 5 for the District of Columbia, do hereby certify that 6 the within transcript is a true and accurate record of 7 the taped telephone conversation as provided by 8 counsel in the above-entitled matter. 9 I further certify that I am not a relative, 10 employee, attorney or counsel of any of the parties to 11 this action and that I am in no way interested in the 12 outcome of this matter. 13 IN WITNESS WHEREOF, I have hereunto set my 14 hand this _____ day of _____, 2008. 15 16 17 18 _____ 19 JONATHAN WONNELL 20 21 My Commission expires: 22 October 1, 2012</p>	

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202-220-4158

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E\*TRADE Client (XXXX-3460)

February 27, 2008

Telephonic Conversation

6

1 UNITED STATES OF AMERICA )

2

3 DISTRICT OF COLUMBIA )

4 I, JONATHAN WONNELL, a Notary Public in and  
5 for the District of Columbia, do hereby certify that  
6 the within transcript is a true and accurate record of  
7 the taped telephone conversation as provided by  
8 counsel in the above-entitled matter.

9 I further certify that I am not a relative,  
10 employee, attorney or counsel of any of the parties to  
11 this action and that I am in no way interested in the  
12 outcome of this matter.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 14<sup>th</sup> day of April, 2008.

15

16

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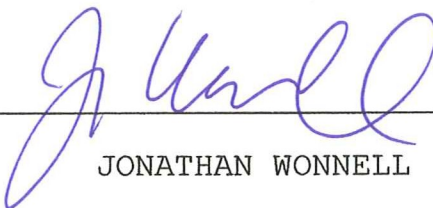
18

19

20

21 My Commission expires:

22 October 1, 2012

  
JONATHAN WONNELL

Henderson Legal Services, Inc.

202-220-4158

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# **EXHIBIT 3**

E\*TRADE Client (XXXX-7400)

March 14, 2008

Telephonic Conversation

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

E\*TRADE FINANCIAL CORPORATION )

and E\*TRADE SECURITIES LLC, )

Plaintiffs, )

v. ) No. 08 CV 2993 (RJH)

MARCUS J. HERNANDEZ, SEAN J. )

GAFFEY, and BANC OF AMERICA )

INVESTMENT SERVICES, INC., )

Defendants. )

- - - - -

Transcription of a taped telephone  
conversation between Client XXXX-7400 and a  
representative of E\*TRADE FINANCIAL CORPORATION,  
recorded on March 14, 2008, transcribed by Cheryl A.  
Lord, a Registered Professional Reporter and Notary  
Public of the District of Columbia.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

E\*TRADE Client (XXXX-7400)

March 14, 2008

## Telephonic Conversation

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 E*TRADE REP 1: This is Jason Moore.</p> <p>4 State your name and account number.</p> <p>5 E*TRADE REP 2: Hi, Jason.</p> <p>6 This is Howard in Platinum.</p> <p>7 How you doing, man?</p> <p>8 E*TRADE REP 1: All right.</p> <p>9 E*TRADE REP 2: Good.</p> <p>10 Let me give you this guy's account number</p> <p>11 here. It's account number XXXX-7400.</p> <p>12 E*TRADE REP 1: Okay.</p> <p>13 E*TRADE REP 2: Client XXXX-7400. I'm</p> <p>14 going to stay on the line with him here. He's got</p> <p>15 some questions about basically taking some money out</p> <p>16 of his account and what the rules are, kind of putting</p> <p>17 it back in here.</p> <p>18 Do you mind talking to him real quick?</p> <p>19 E*TRADE REP 1: I don't.</p> <p>20 E*TRADE REP 2: Thanks, man. We'll be</p> <p>21 talking in just a bit.</p> <p>22 Client XXXX-7400?</p>	<p style="text-align: right;">3</p> <p>1 CLIENT XXXX-7400: Yes.</p> <p>2 E*TRADE REP 2: Thanks for holding.</p> <p>3 I got Jason Moore on the line with us from</p> <p>4 the retirement desk, and I'm going to stay on the line</p> <p>5 with you here and listen in. So if you want to ask</p> <p>6 Jason your question here, he should be able to help</p> <p>7 you out.</p> <p>8 CLIENT XXXX-7400: Okay.</p> <p>9 E*TRADE REP 1: Thank you for holding,</p> <p>10 Client XXXX-7400.</p> <p>11 My name is Jason Moore with the retirement</p> <p>12 tax team. I was told that you had some questions</p> <p>13 about distributions from the account, sir.</p> <p>14 CLIENT XXXX-7400: Yes.</p> <p>15 I want to know if you know if it's allowed</p> <p>16 for me to borrow money from an IRA and pay it back</p> <p>17 before the end of the tax year.</p> <p>18 E*TRADE REP 1: Okay. Okay.</p> <p>19 Now, before the end of the tax year, now,</p> <p>20 there's what's called a 60-day rollover, which means</p> <p>21 you can take the money out of the account and you can</p> <p>22 deposit it back into the account within 60 days.</p>
<p style="text-align: right;">4</p> <p>1 CLIENT XXXX-7400: When I pull the money</p> <p>2 out -- does that then -- do you have to -- at the end</p> <p>3 of the year, do you file a form or a report to the IRS</p> <p>4 that it went out and then it came back in again?</p> <p>5 E*TRADE REP 1: Yes, sir.</p> <p>6 What would happen is, you would get a --</p> <p>7 what's called a 1099 R, which shows that you took a</p> <p>8 distribution out of the account, and then you put the</p> <p>9 money back in, you get a 5498, which says the money</p> <p>10 went -- got put back into the account, but the --</p> <p>11 those forms do not put actual dates on it. If the IRS</p> <p>12 ever audited on it, you'll have to provide</p> <p>13 documentation as far as your statements go, showing</p> <p>14 the dates it was done within 60 calendar days. It's</p> <p>15 not an actual loan where you pay an actual percentage</p> <p>16 on it, like a 401(k) or anything like that.</p> <p>17 CLIENT XXXX-7400: Right. Okay. All</p> <p>18 right.</p> <p>19 I think that helps me. That's all I</p> <p>20 needed.</p> <p>21 E*TRADE REP 1: All right.</p> <p>22 Is there anything else I can do for you,</p>	<p style="text-align: right;">5</p> <p>1 Client XXXX-7400?</p> <p>2 CLIENT XXXX-7400: No, that's it.</p> <p>3 Thank you.</p> <p>4 Is there anything else, Howard?</p> <p>5 E*TRADE REP 2: No, thanks, Jason.</p> <p>6 Client XXXX-7400, did you need anything</p> <p>7 else from me today?</p> <p>8 CLIENT XXXX-7400: No.</p> <p>9 That gives me the information. I'm</p> <p>10 probably not going to do it for 60 days.</p> <p>11 E*TRADE REP 2: Okay.</p> <p>12 CLIENT XXXX-7400: I don't want to</p> <p>13 complicate things. I'll look other places for funds.</p> <p>14 E*TRADE REP 2: Okay. Now, that said, do</p> <p>15 you have any plans for that -- I mean, you got 171,000</p> <p>16 in cash in that beneficiary IRA.</p> <p>17 CLIENT XXXX-7400: Right.</p> <p>18 E*TRADE REP 2: Did you have any other</p> <p>19 plans to do anything with that, then, at this time?</p> <p>20 CLIENT XXXX-7400: Well, I'm probably going</p> <p>21 to -- the market looks pretty hammered right now. It</p> <p>22 might be a good time to buy some stocks, so I'll</p>

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E\*TRADE Client (XXXX-7400)

March 14, 2008

## Telephonic Conversation

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 probably be buying something pretty soon. Just kind 2 of waiting for it to take another -- pull back again. 3 E*TRADE REP 2: If you decide anything, if 4 you're going to stay where it's at and not come back 5 here, let me know, and we can get you in touch with 6 one of the financial advisers there and maybe at least 7 get you some interest on that cash. 8 CLIENT XXXX-7400: Yeah. 9 It's getting a little bit of interest in 10 the account. 11 E*TRADE REP 2: Right, but not as much as 12 they can get you obviously with, you know, some 13 preferreds or whatever type of bonds specials they got 14 going on there. I think the guy you talked to in the 15 past is Sean Gaffey, who is actually no longer here. 16 If you end up wanting to do something like that, just 17 let me know, and I'll get you in touch with an 18 adviser. 19 CLIENT XXXX-7400: Yeah. 20 In fact Sean called me. I don't know if 21 that's legal or not. 22 E*TRADE REP 2: No, it's not. When did he</p>	<p style="text-align: right;">7</p> <p>1 call you? 2 CLIENT XXXX-7400: After he left. 3 E*TRADE REP 2: (Inaudible.) 4 CLIENT XXXX-7400: Yeah. 5 He said he was at a new firm and just to 6 let me know that he was there if I had any money I 7 wanted to invest. 8 E*TRADE REP 2: He's at Banc of America, 9 and we make those guys sign noncompetes, so it's 10 really not kosher if you know what I mean there. 11 CLIENT XXXX-7400: Right. 12 I don't think it's -- I think when people 13 sign contracts, they ought to stick with them, and if 14 you have other instances of that and you want me to 15 certify that, I'd be glad to do it. 16 E*TRADE REP 2: I appreciate that. 17 Yeah. We do have some other ones, so I 18 will let you know if we need anything like that, 19 because I really appreciate it. 20 CLIENT XXXX-7400: Yeah. 21 I don't have dates where he called me. He 22 just called me and let me know he left, and it's been</p>
<p style="text-align: right;">8</p> <p>1 a while since he called me. 2 E*TRADE REP 2: Okay. I really appreciate 3 your telling me that. I'll kind of push that up the 4 ladder and let them know, because I don't know if 5 they're -- you know, if anything is going to happen 6 with that or not, but we'll definitely be in touch if 7 we need any documentation or anything like that. 8 CLIENT XXXX-7400: Okay. 9 E*TRADE REP 2: Was there anything else at 10 this time? 11 CLIENT XXXX-7400: No. 12 That's it. 13 Thank you. 14 E*TRADE REP 2: All right. Take care, 15 Client XXXX-7400. 16 (Audio ends.) 17 18 19 20 21 22</p>	<p style="text-align: right;">9</p> <p>1 UNITED STATES OF AMERICA ) 2 DISTRICT OF COLUMBIA ) 3 I, CHERYL A. LORD, a Notary Public in and 4 for the District of Columbia, do hereby certify that 5 the within transcript is a true and accurate record of 6 the taped telephone conversation as provided by 7 counsel in the above-entitled matter. 8 I further certify that I am not a relative, 9 employee, attorney or counsel of any of the parties to 10 this action and that I am in no way interested in the 11 outcome of this matter. 12 IN WITNESS WHEREOF, I have hereunto set my 13 hand this day of , 2008. 14 15 CHERYL A. LORD 16 Notary Public in and for the 17 District of Columbia 18 My Commission expires April 30, 2011 19 20 21 22</p>

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1 UNITED STATES OF AMERICA )

2 DISTRICT OF COLUMBIA )

3 I, CHERYL A. LORD, a Notary Public in and  
4 for the District of Columbia, do hereby certify that  
5 the within transcript is a true and accurate record of  
6 the taped telephone conversation as provided by  
7 counsel in the above-entitled matter.

8 I further certify that I am not a relative,  
9 employee, attorney or counsel of any of the parties to  
10 this action and that I am in no way interested in the  
11 outcome of this matter.

12 IN WITNESS WHEREOF, I have hereunto set my  
13 hand this 11<sup>th</sup> day of April, 2008.

14   
15 CHERYL A. LORD

16 Notary Public in and for the  
17 District of Columbia

18 My Commission expires April 30, 2011  
19  
20  
21  
22

# **EXHIBIT 4**

E\*TRADE Client (XXXX-0977)

April 9, 2008

Telephonic Conversation

1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -  
E\*TRADE FINANCIAL CORPORATION     )  
and E\*TRADE SECURITIES LLC,        )  
  Plaintiffs,     )  
  
  v.                     ) No. 08 CV 2993 (RJH)  
  
MARCUS J. HERNANDEZ, SEAN J.        )  
GAFFEY, and BANC OF AMERICA        )  
INVESTMENT SERVICES, INC.,         )  
  Defendants.        )  
  
- - - - -

Transcription of a taped telephone conversation  
between E\*TRADE Client XXXX-0977 and a representative  
of E\*TRADE FINANCIAL CORPORATION, recorded on an  
unknown date, transcribed by Jonathan Wonnell, a  
Registered Professional Court Reporter and Notary  
Public of the District of Columbia.

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E\*TRADE Client (XXXX-0977)

April 9, 2008

## Telephonic Conversation

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 PROCEEDINGS</p> <p>2 (Phone ringing.)</p> <p>3 CLIENT XXXX-0977: This is XXXX-0977.</p> <p>4 E*TRADE REP: Hey, XXXX-0977. It's Alan</p> <p>5 Casebolt, with E*TRADE Financial in Denver. How are</p> <p>6 you doing today?</p> <p>7 CLIENT XXXX-0977: Oh, pretty good. How</p> <p>8 about yourself?</p> <p>9 E*TRADE REP: I'm doing well. I'm doing</p> <p>10 well. I just wanted to call for a couple of things.</p> <p>11 One of them is I just want to let you know -- I don't</p> <p>12 know whether you've heard or not -- but Marcus</p> <p>13 Hernandez actually left E*TRADE.</p> <p>14 CLIENT XXXX-0977: Yeah. I was pretty</p> <p>15 bummed.</p> <p>16 E*TRADE REP: Were you? And I can</p> <p>17 understand. One thing I can do is put you in touch</p> <p>18 with another gentleman when you're ready by the name</p> <p>19 of Brian Fallon because I know you didn't want to work</p> <p>20 with Roger and Brian is another person out of that</p> <p>21 same office as Marcus was.</p> <p>22 CLIENT XXXX-0977: Yeah.</p>	<p style="text-align: right;">3</p> <p>1 E*TRADE REP: And I can put you in touch</p> <p>2 with him if you decide if you need to do anything or you</p> <p>3 want to have a review done again.</p> <p>4 CLIENT XXXX-0977: Okay.</p> <p>5 E*TRADE REP: Because we've got him</p> <p>6 available. But I just did want to check in with you</p> <p>7 and let you know about that. Other than that, wanted</p> <p>8 to find out whether you had any questions about all of</p> <p>9 the news that's been out on E*TRADE here lately.</p> <p>10 CLIENT XXXX-0977: Yeah. Marcus was candid</p> <p>11 about his concerns about, you know, E*TRADE as an</p> <p>12 entity. You know, just being able to stay afloat was</p> <p>13 probably his biggest concern.</p> <p>14 E*TRADE REP: Okay.</p> <p>15 CLIENT XXXX-0977: That's one of the</p> <p>16 reasons why he left. Not that it's imminent, but that</p> <p>17 it's -- and I actually had a Morning Star editor on</p> <p>18 this -- a client of mine express some concern that</p> <p>19 actually still reads E*TRADE that kind of alluding to</p> <p>20 the same thing. What do you think?</p> <p>21 E*TRADE REP: You know, I think we're fine.</p> <p>22 I mean, I think we're going to have a bumpy road for a</p>
<p style="text-align: right;">4</p> <p>1 while. I think the stock has certainly taken a</p> <p>2 beating and we're still -- you know, there's still some concerns</p> <p>3 out there with the debt we took on. But at the same</p> <p>4 time the stock is doing -- is still doing well. And I</p> <p>5 think it will -- I think we're going to continue to</p> <p>6 survive. I think --</p> <p>7 CLIENT XXXX-0977: Yeah.</p> <p>8 E*TRADE REP: You know, one of the things</p> <p>9 that they didn't talk about you don't hear much about is last year,</p> <p>10 even though we had the huge loss, our actual earnings was a record</p> <p>11 year.</p> <p>12 CLIENT XXXX-0977: Yeah.</p> <p>13 E*TRADE REP: You know, and we're still</p> <p>14 opening up accounts. We've still got -- We're well capitalized</p> <p>15 and I think we'll continue to be. We're running a couple of</p> <p>16 commercials I know on the Super Bowl Sunday --</p> <p>17 CLIENT XXXX-0977: Oh, good.</p> <p>18 E*TRADE REP: -- to get business back going</p> <p>19 again. There's really a nice article in the Wall</p> <p>20 Street Journal. I'm looking at an online version of</p> <p>21 it. I don't know whether it will be available -- you</p> <p>22 know, whether it's available in the actual paper -- I</p>	<p style="text-align: right;">5</p> <p>1 haven't looked -- on us. And there's analysts that</p> <p>2 say they're still concerned. There's analysts that say</p> <p>3 we're fine.</p> <p>4 And everything I am hearing it says we're</p> <p>5 doing fine. There is information like if you want</p> <p>6 to -- if you have concerns what you can do is go on to</p> <p>7 the website.</p> <p>8 CLIENT XXXX-0977: Yeah.</p> <p>9 E*TRADE REP: And actually before you log</p> <p>10 in to the account, once you've -- as soon as you hit</p> <p>11 the website, there's a tab you can go to -- there's a</p> <p>12 couple things you can see there.</p> <p>13 CLIENT XXXX-0977: Okay.</p> <p>14 E*TRADE REP: The tab -- as I'm looking for</p> <p>15 it here myself, so that I can tell you what it's called --</p> <p>16 is called -- it's about E*TRADE/investor relations.</p> <p>17 And in that tab you'll see a couple of things. One of</p> <p>18 them is you can listen to -- there's the recording of</p> <p>19 our fourth quarter call you can listen to. There is</p> <p>20 also -- you know, you can play it and listen to it.</p> <p>21 There is also a deal on there that talks</p> <p>22 about the progress in our turnaround plan that came</p>

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E\*TRADE Client (XXXX-0977)

April 9, 2008

## Telephonic Conversation

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 out on January 9th.</p> <p>2 CLIENT XXXX-0977: Okay.</p> <p>3 E*TRADE REP: So there's several things out</p> <p>4 there you can look at. But like I said, I think we're</p> <p>5 doing fine. I think we will continue to do fine. I</p> <p>6 think it's just going to be -- you know, as one of the things</p> <p>7 that does happen a lot with us right now is we're</p> <p>8 lumped in with everybody else who's had trouble with</p> <p>9 subprime stuff.</p> <p>10 CLIENT XXXX-0977: Yep.</p> <p>11 E*TRADE REP: And anytime anybody announces</p> <p>12 that they're going to have to take another write-off</p> <p>13 on the subprime stuff, our stock takes a hit.</p> <p>14 CLIENT XXXX-0977: Yup.</p> <p>15 E*TRADE REP: It's kind of like Microsoft</p> <p>16 was during the tech wreck. A very good company, did</p> <p>17 very well, but every time somebody -- a tech problem</p> <p>18 came out they took a hit because they were a tech</p> <p>19 company as well.</p> <p>20 CLIENT XXXX-0977: Yep.</p> <p>21 E*TRADE REP: But I think we're going to</p> <p>22 continue to do fine. I think it's just going to be --</p>	<p style="text-align: right;">7</p> <p>1 A lot of people are saying and Jarrett, the acting CEO</p> <p>2 said it's going to be 2009 probably before we return a</p> <p>3 profit. But we're well capitalized and we're going to</p> <p>4 make it through the whole mess.</p> <p>5 CLIENT XXXX-0977: Well, I think one of the</p> <p>6 things mentioned was your big dog leader was leaving.</p> <p>7 So that was a factor in Marcus' concern too.</p> <p>8 E*TRADE REP: Was the fact that Mitch was</p> <p>9 leaving?</p> <p>10 CLIENT XXXX-0977: Yeah.</p> <p>11 E*TRADE REP: And I think part of the thing</p> <p>12 with him -- I think he left -- because he's one of the reasons</p> <p>13 we ended up in this mess.</p> <p>14 CLIENT XXXX-0977: Yeah.</p> <p>15 E*TRADE REP: And the one thing I like is</p> <p>16 right now Jarrett, who's the acting CEO and is going</p> <p>17 for the job of CEO, he actually came from the</p> <p>18 brokerage side of the business and he's the one that's</p> <p>19 right now leading the recovery and getting back to the</p> <p>20 basics of the brokerage business which is where our</p> <p>21 bread and butter is. That's where we've built our</p> <p>22 company on.</p>
<p style="text-align: right;">8</p> <p>1 And Mitch was more from the banking side</p> <p>2 and I think he was trying to -- he was from the</p> <p>3 banking side and was trying to build the business</p> <p>4 through the banking side and was directing with the</p> <p>5 buying of the CDOs that ended up hurting us.</p> <p>6 CLIENT XXXX-0977: Yep.</p> <p>7 E*TRADE REP: So I like having Mitch --</p> <p>8 or -- excuse me -- Jarrett in charge. I think he's</p> <p>9 going to do a good job just in the fact that he knows</p> <p>10 the brokerage side of the business, which is where we</p> <p>11 make most of our money.</p> <p>12 CLIENT XXXX-0977: Well, I've enjoyed the</p> <p>13 combination. And of course your yield is a big -- is</p> <p>14 competitive nationally.</p> <p>15 E*TRADE REP: And I think we're going to</p> <p>16 continue to have that. With Mitch in charge it's not</p> <p>17 like were going to abandon the bank side. But I think</p> <p>18 more the focus on growth is going to be from the</p> <p>19 brokerage side of the business and expanding on that.</p> <p>20 CLIENT XXXX-0977: Well, you know, one thing</p> <p>21 interesting, of course, you know when you deal with a</p> <p>22 broker like recommended by Marcus, I kind of got into</p>	<p style="text-align: right;">9</p> <p>1 those investments a little bit. And they are</p> <p>2 front-end loaded probably because of the fee to be</p> <p>3 enjoyed by the broker -- I'm guessing, anyhow -- such</p> <p>4 as Marcus would have done.</p> <p>5 E*TRADE REP: Right, and a lot of times they'll</p> <p>6 tell you depending on how much you're putting into the</p> <p>7 investments -- and I don't know which one you did with</p> <p>8 him. But a lot of times they'll put you into the</p> <p>9 front-end loaded type of things because you get a</p> <p>10 better price if you're doing larger investments. You</p> <p>11 know, as you invest more money the price goes down on</p> <p>12 the front-end load.</p> <p>13 The other choice is doing like a back-end</p> <p>14 load or C share. And with those type of</p> <p>15 investments -- with those you're going to -- back-end</p> <p>16 load you've got to hold for a longer period of time</p> <p>17 and there's no break for adding to the accounts or</p> <p>18 buying additional shares or for doing a bulk transfer,</p> <p>19 whereas --</p> <p>20 CLIENT XXXX-0977: Alan, can you give me</p> <p>21 your phone number again?</p> <p>22 E*TRADE REP: Yep. It's 866-789-0720,</p>

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E\*TRADE Client (XXXX-0977)

April 9, 2008

## Telephonic Conversation

4 (Pages 10 to 13)

<p style="text-align: right;">10</p> <p>1 extension 0143.</p> <p>2 CLIENT XXXX-0977: 866-789-0270?</p> <p>3 E*TRADE REP: No. 0720.</p> <p>4 CLIENT XXXX-0977: Okay. 0720 extension</p> <p>5 0143. Okay.</p> <p>6 E*TRADE REP: Mm-hmm.</p> <p>7 CLIENT XXXX-0977: Because sometime I have</p> <p>8 time to talk I might just bring up a couple of these.</p> <p>9 Now, I believe in front-ends that they actually -- I'm</p> <p>10 trying to remember how this works. You pay the front</p> <p>11 end but if you keep them for five years and there's</p> <p>12 no -- don't they write off over a period of five years</p> <p>13 or something like that? I forgot how that works.</p> <p>14 E*TRADE REP: No. The one thing about a</p> <p>15 front-end load is once you've paid the sales charge</p> <p>16 you're done.</p> <p>17 CLIENT XXXX-0977: Okay.</p> <p>18 E*TRADE REP: What you're thinking of is a</p> <p>19 B share, which is a back-end load. And you have to</p> <p>20 hold them usually for about seven years and at the end</p> <p>21 of the seven years the 12B-1 fee drops to the A share</p> <p>22 rate, whereas with a front-end load or an A share, you</p>	<p style="text-align: right;">11</p> <p>1 pay your sales charge up front and the 12B-1s are the</p> <p>2 lowest that's offered in that fund. And they're</p> <p>3 always that way.</p> <p>4 CLIENT XXXX-0977: Okay. Yeah.</p> <p>5 E*TRADE REP: And so once it's peaked out</p> <p>6 on you, once you've recovered that sales charge or</p> <p>7 even -- at any time you want you can sell out of that</p> <p>8 fund without having to incur any charges or penalties.</p> <p>9 CLIENT XXXX-0977: Right. Okay. I'm not</p> <p>10 sure which is better. I imagine if you're not going</p> <p>11 to get out, back ends are better, would they, because</p> <p>12 they actually cost you --</p> <p>13 E*TRADE REP: Actually, over time the</p> <p>14 A shares work better.</p> <p>15 CLIENT XXXX-0977: Really?</p> <p>16 E*TRADE REP: They do, because the fact</p> <p>17 that B shares have a higher 12B-1 fee for seven years,</p> <p>18 that 12B-1 fee ends up taking out more and cutting</p> <p>19 down on the performance over time.</p> <p>20 CLIENT XXXX-0977: So there's a different</p> <p>21 fee basis for the maintenance for the fund on an</p> <p>22 annual basis with the back-ends --</p>
<p style="text-align: right;">12</p> <p>1 E*TRADE REP: Yes. That's right.</p> <p>2 CLIENT XXXX-0977: -- and you're recovering</p> <p>3 that?</p> <p>4 E*TRADE REP: The 12b-1 fee, basically</p> <p>5 those are the fees that go to the advisor and the fees</p> <p>6 that go to the fund family. And the higher 12B-1 fees</p> <p>7 in that first seven years being, causes -- slows down the</p> <p>8 performance usually over a longer period of time.</p> <p>9 Now, it depends on -- and plus, like I say, the A</p> <p>10 share has break points. And I don't know. Were these</p> <p>11 from different fund families or were they all the same</p> <p>12 fund family?</p> <p>13 CLIENT XXXX-0977: No. Different funds.</p> <p>14 E*TRADE REP: Different funds.</p> <p>15 CLIENT XXXX-0977: New York Venture, I</p> <p>16 think, and there's a number of them that he got me</p> <p>17 into. I don't know if I could throw a couple out. It</p> <p>18 would take me a second here.</p> <p>19 E*TRADE REP: Highland Oppenheimer.</p> <p>20 CLIENT XXXX-0977: Yeah.</p> <p>21 E*TRADE REP: Davis, New York Venture,</p> <p>22 Eaton Vance. I'd have to look and see how much you</p>	<p style="text-align: right;">13</p> <p>1 put into each one of them. But generally with an A</p> <p>2 share, like I say, you get break points.</p> <p>3 CLIENT XXXX-0977: Yeah.</p> <p>4 E*TRADE REP: The first break point is</p> <p>5 usually at \$50,000.</p> <p>6 CLIENT XXXX-0977: Uh-huh.</p> <p>7 E*TRADE REP: And it looks like -- did you</p> <p>8 put more than \$50,000 -- did you put \$50,000 or more</p> <p>9 into each of them or --</p> <p>10 CLIENT XXXX-0977: Some of them I did,</p> <p>11 yeah.</p> <p>12 E*TRADE REP: When you did that, you</p> <p>13 basically got -- the sales charge basically went down</p> <p>14 for you.</p> <p>15 CLIENT XXXX-0977: Yeah.</p> <p>16 E*TRADE REP: So you end up paying less</p> <p>17 when you buy them.</p> <p>18 CLIENT XXXX-0977: You know, they're all</p> <p>19 kind of income-producing assets, all these were.</p> <p>20 E*TRADE REP: Mm-hmm.</p> <p>21 CLIENT XXXX-0977: And that was one of the</p> <p>22 criteria, conservatism and a predictable income on a</p>

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E\*TRADE Client (XXXX-0977)

April 9, 2008

## Telephonic Conversation

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 historic basis. So 8, 9 percent was what I was 2 shooting for. 3 E*TRADE REP: Mm-hmm. 4 CLIENT XXXX-0977: And that's when he did 5 the combination. And there's a mix there. My 6 spreadsheet looks different. Maybe it's because 7 you're into my spreadsheet too. 8 E*TRADE REP: That might be. It's showing 9 the positions right now? Like it's got the names of 10 them? 11 CLIENT XXXX-0977: Yeah. 12 E*TRADE REP: Yeah. I did that. If you go 13 up to the top and just click on -- in the View, click 14 on performance -- 15 CLIENT XXXX-0977: Okay. 16 E*TRADE REP: -- that will make it look 17 like it normally does. 18 CLIENT XXXX-0977: Okay. Let me check it 19 out then. All right. Interesting. 20 E*TRADE REP: Yeah. I didn't realize that 21 when we look at stuff -- because I was looking around 22 to see what happened or where we were at. And it</p>	<p style="text-align: right;">15</p> <p>1 looks like on like the OIDX just by the value and the 2 loss it's showing that that was a \$50,000 investment. 3 CLIENT XXXX-0977: Right. I'm a little 4 surprised the bonds didn't gain in value because of 5 the rate with the fed funds. I'm looking at any 6 excess premium to be made or profit to be made should 7 I sell those bonds, and I'm not seeing much. 8 E*TRADE REP: One of the things is with the 9 bond quotes you see, those are not -- those are a 10 number that's calculated off of the ten year treasury. 11 CLIENT XXXX-0977: Okay. 12 E*TRADE REP: If you actually wanted to 13 sell the bonds the best thing to do is to call and get 14 a firm quote from our bond desk. 15 CLIENT XXXX-0977: Okay. 16 E*TRADE REP: Because what happens on those 17 is with bonds, they're a lot more thinly traded. 18 CLIENT XXXX-0977: Yeah. 19 E*TRADE REP: And so the quotes are not 20 really what you're going to get for it until you go 21 out and say I want to sell this. And what happens 22 when they do a bond quote is they throw it out there</p>
<p style="text-align: right;">16</p> <p>1 and they'll get three or four different quotes from 2 bond traders, this is what I'm willing to pay for 3 it. 4 CLIENT XXXX-0977: So you don't have to 5 close on it but you can kind of put it out there to 6 see what it would sell for? 7 E*TRADE REP: Generally they want you to be 8 looking to sell it. I mean, if you're looking to sell 9 it you could always say no, I don't want to. But 10 generally what they're looking for is they want you to 11 be looking to sell it if you're getting a quote. 12 CLIENT XXXX-0977: But they will do that 13 much, give you what they think current value is? 14 E*TRADE REP: Right. Right. 15 CLIENT XXXX-0977: Okay. 16 E*TRADE REP: One of the things is you can 17 call the bond team or you can also if you're looking 18 to sell I would probably hook you up with Brian Fallon 19 who works in New York. That's the gentleman that I was 20 mentioning. And have him -- and then he can get the 21 quotes for you. 22 CLIENT XXXX-0977: Okay. Good. Well, I'll</p>	<p style="text-align: right;">17</p> <p>1 definitely get back with you on this stuff. 2 E*TRADE REP: Okay. 3 CLIENT XXXX-0977: I believe I'm in for the 4 long haul here anyhow. 5 E*TRADE REP: Right. 6 CLIENT XXXX-0977: Except for maybe on the 7 bonds. Maybe there's a point when maybe we're down to 8 1 percent, you know, which is possible, on federal rates. 9 Maybe that will be the time. 10 E*TRADE REP: Right. Now would you like me 11 to just have Brian call you to have him introduce 12 him to you? 13 CLIENT XXXX-0977: That would be fine. 14 E*TRADE REP: Okay. I will have him -- his 15 name is Brian Fallon. 16 CLIENT XXXX-0977: Okay. 17 E*TRADE REP: And I will have him give you 18 a call and just to introduce himself to you so you've 19 got a new contact up there with the -- 20 CLIENT XXXX-0977: Well, one fellow I did 21 talk to, but I don't remember his name, over there in 22 lieu of Marcus, but it's been about a week or so since</p>

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E\*TRADE Client (XXXX-0977)

April 9, 2008

## Telephonic Conversation

6 (Pages 18 to 20)

<p style="text-align: right;">18</p> <p>1 I've talked to him.</p> <p>2 E*TRADE REP: I'll look and see who that</p> <p>3 was, if there was -- so somebody has contacted you</p> <p>4 already? Because I can usually find in the notes who</p> <p>5 that was.</p> <p>6 CLIENT XXXX-0977: It was a guy, yeah.</p> <p>7 E*TRADE REP: Okay.</p> <p>8 CLIENT XXXX-0977: But it was because I</p> <p>9 proactively did it. But we only had one discussion</p> <p>10 and it really didn't go anywhere, so --</p> <p>11 E*TRADE REP: Okay.</p> <p>12 CLIENT XXXX-0977: Well, thank you.</p> <p>13 E*TRADE REP: Okay. Was it Kenneth Elbee?</p> <p>14 CLIENT XXXX-0977: It could have been,</p> <p>15 yeah.</p> <p>16 E*TRADE REP: Okay. Yeah. I'm seeing that</p> <p>17 there is notes in there that he had called and talked</p> <p>18 to you. So I'll bet you that was it. Okay. Sounds</p> <p>19 good.</p> <p>20 CLIENT XXXX-0977: Okay. Thanks.</p> <p>21 E*TRADE REP: Thank you. Good-bye.</p> <p>22 CLIENT XXXX-0977: Bye now.</p>	<p style="text-align: right;">19</p> <p>1 (Audio ends.)</p>
<p style="text-align: right;">20</p> <p>1 UNITED STATES OF AMERICA )</p> <p>2</p> <p>3 DISTRICT OF COLUMBIA )</p> <p>4 I, JONATHAN WONNELL, a Notary Public in and</p> <p>5 for the District of Columbia, do hereby certify that</p> <p>6 the within transcript is a true and accurate record of</p> <p>7 the taped telephone conversation as provided by</p> <p>8 counsel in the above-entitled matter.</p> <p>9 I further certify that I am not a relative,</p> <p>10 employee, attorney or counsel of any of the parties to</p> <p>11 this action and that I am in no way interested in the</p> <p>12 outcome of this matter.</p> <p>13 IN WITNESS WHEREOF, I have hereunto set my</p> <p>14 hand this _____ day of _____, 2008.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 JONATHAN WONNELL</p> <p>20</p> <p>21 My Commission expires:</p> <p>22 October 1, 2012</p>	

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E\*TRADE Client (XXXX-0977)

Telephonic Conversation

20

1 UNITED STATES OF AMERICA )

2

3 DISTRICT OF COLUMBIA )

4 I, JONATHAN WONNELL, a Notary Public in and  
5 for the District of Columbia, do hereby certify that  
6 the within transcript is a true and accurate record of  
7 the taped telephone conversation as provided by  
8 counsel in the above-entitled matter.

9 I further certify that I am not a relative,  
10 employee, attorney or counsel of any of the parties to  
11 this action and that I am in no way interested in the  
12 outcome of this matter.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 14<sup>th</sup> day of April, 2008.

15

16

17


18

19

20

21 My Commission expires:

22 October 1, 2012

  
JONATHAN WONNELL

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# **EXHIBIT 5**

E\*TRADE Client (XXXX-6453)

April 9, 2008

Telephonic Conversation

1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -  
E\*TRADE FINANCIAL CORPORATION     )  
and E\*TRADE SECURITIES LLC,        )  
  Plaintiffs,     )  
  
  v.                     ) No. 08 CV 2993 (RJH)  
  
MARCUS J. HERNANDEZ, SEAN J.        )  
GAFFEY, and BANC OF AMERICA        )  
INVESTMENT SERVICES, INC.,         )  
  Defendants.        )  
  
- - - - -

Transcription of a taped telephone conversation  
between E\*TRADE Client XXXX-6453 and a representative  
of E\*TRADE FINANCIAL CORPORATION, recorded on January  
29, 2008, transcribed by Jonathan Wonnell, a  
Registered Professional Court Reporter and Notary  
Public of the District of Columbia.

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E\*TRADE Client (XXXX-6453)

April 9, 2008

## Telephonic Conversation

2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 PROCEEDINGS</p> <p>2 E*TRADE REP 1: Thanks for calling E*TRADE.</p> <p>3 This is Chris.</p> <p>4 E*TRADE REP 2: Hey, Chris. This is Sharma</p> <p>5 Shapur [phon.]. We just got another account here.</p> <p>6 XXXX-6453.</p> <p>7 E*TRADE REP 1: Okay.</p> <p>8 E*TRADE REP 2: I tried to get in contact</p> <p>9 with the financial advisor with this client, but he's</p> <p>10 no longer working with E*TRADE, it appears.</p> <p>11 E*TRADE REP 1: That's correct.</p> <p>12 E*TRADE REP 2: Yeah. And the client wants</p> <p>13 to buy some TIPS, Treasury, you know, TIP auctions</p> <p>14 here.</p> <p>15 E*TRADE REP 1: Okay.</p> <p>16 E*TRADE REP 2: Specifically he wouldn't</p> <p>17 tell me what it is, but I have him on the line right</p> <p>18 now.</p> <p>19 E*TRADE REP 1: Okay.</p> <p>20 E*TRADE REP 2: And I actually checked the</p> <p>21 advisor -- we have a link where we can actually find a</p> <p>22 new financial advisor. And I found the branch I was</p>	<p style="text-align: right;">3</p> <p>1 supposed to call and I called the branch twice and</p> <p>2 they kept on referring me to an actual -- to a voice</p> <p>3 message, so --</p> <p>4 E*TRADE REP 1: Okay.</p> <p>5 E*TRADE REP 2: I'm happy to give you the</p> <p>6 call.</p> <p>7 E*TRADE REP 1: Sure. So he's just looking</p> <p>8 to buy a TIP?</p> <p>9 E*TRADE REP 2: Yeah. He's looking for</p> <p>10 some help.</p> <p>11 E*TRADE REP 1: Sure. I can help you.</p> <p>12 E*TRADE REP 2: Okay. Thank you, sir.</p> <p>13 E*TRADE REP 1: Thank you.</p> <p>14 E*TRADE REP 2: Thank you for staying on</p> <p>15 hold. I'm sorry I took a while. I have a financial</p> <p>16 advisor on the line right now who would be more than</p> <p>17 happy to help with your potential order right now.</p> <p>18 CLIENT XXXX-6453: Okay. Thank you.</p> <p>19 E*TRADE REP 2: Thank you for your TIPS</p> <p>20 offer. You have a great day.</p> <p>21 E*TRADE REP 1: Hello, Mr. (Client</p> <p>22 XXXX-6453)?</p>
<p style="text-align: right;">4</p> <p>1 CLIENT XXXX-6453: Yes.</p> <p>2 E*TRADE REP #1: Yes. This is Chris</p> <p>3 Erlewine. I'm a financial advisor here with E*TRADE.</p> <p>4 How are you?</p> <p>5 CLIENT XXXX-6453: Oh, fine. How are you?</p> <p>6 E*TRADE REP 1: Good. Thank you. I</p> <p>7 understand that you're looking into picking up some</p> <p>8 treasuries today?</p> <p>9 CLIENT XXXX-6453: Yeah. I found this</p> <p>10 screen somewhere -- now I can't find it again -- about</p> <p>11 the treasury auction.</p> <p>12 E*TRADE REP #1: Yes. Mm-hmm.</p> <p>13 CLIENT XXXX-6453: I was hoping to buy some</p> <p>14 of these inflation protected bonds without paying a</p> <p>15 big point spread, which I notice when I look at the</p> <p>16 secondary market here there's quite a spread between</p> <p>17 bid and asked for those bonds. So I was thinking if I</p> <p>18 could do it through the auction it would be a better</p> <p>19 deal.</p> <p>20 E*TRADE REP 1: What's the time frame</p> <p>21 you're looking at for the treasury inflation?</p> <p>22 CLIENT XXXX-6453: What's the what?</p>	<p style="text-align: right;">5</p> <p>1 E*TRADE REP 1: What's the term that you're</p> <p>2 looking at? Like what --</p> <p>3 CLIENT XXXX-6453: Well, right now I was</p> <p>4 looking at the January 15th 2018, ten-year.</p> <p>5 E*TRADE REP 1: Okay.</p> <p>6 CLIENT XXXX-6453: It has a bid right now</p> <p>7 of 101.44 and an asked of 102.83. But I found this</p> <p>8 screen that said treasury auction. And for some</p> <p>9 reason I couldn't get it to work.</p> <p>10 E*TRADE REP #1: Right. Let me see -- I</p> <p>11 can take a look and see when the next auction is for</p> <p>12 the TIP. They're not as frequent as just the treasury</p> <p>13 bills and things of that nature.</p> <p>14 CLIENT XXXX-6453: Maybe it's because the</p> <p>15 auction is over for that particular issue?</p> <p>16 E*TRADE REP 1: Yeah. There are no more</p> <p>17 this week.</p> <p>18 CLIENT XXXX-6453: Oh, they only last for a</p> <p>19 week?</p> <p>20 E*TRADE REP 1: Well, I mean, like the</p> <p>21 three month treasuries happen every week but when</p> <p>22 you're talking about TIPS, they're not as frequent</p>

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E\*TRADE Client (XXXX-6453)

April 9, 2008

## Telephonic Conversation

3 (Pages 6 to 9)

<p style="text-align: right;">6</p> <p>1 for --</p> <p>2 CLIENT XXXX-6453: I guess the next issue</p> <p>3 would be in July, right?</p> <p>4 E*TRADE REP 1: Right. It appears that</p> <p>5 way. Let me double-check here and see upcoming</p> <p>6 auctions here. You were looking at the January 15th</p> <p>7 2018? That's the one you were originally interested</p> <p>8 in?</p> <p>9 CLIENT XXXX-6453: That's right.</p> <p>10 E*TRADE REP #1: How many were you</p> <p>11 originally looking to pick up?</p> <p>12 CLIENT XXXX-6453: Well, I was looking at</p> <p>13 \$500,000. That's why I didn't want to get stuck with</p> <p>14 a big spread. Do you guys negotiate these rates? I</p> <p>15 know a lot of that spread is the broker's take or</p> <p>16 whatever you call it.</p> <p>17 E*TRADE REP 1: Yeah. Sometimes I can cut</p> <p>18 into them. I can actually do a mid-quote request to</p> <p>19 see because you're buying so many we might be able to</p> <p>20 get a better price for you. So I can certainly go out</p> <p>21 and see what's available there. You said you</p> <p>22 originally saw a price of 102.44 or --</p>	<p style="text-align: right;">7</p> <p>1 CLIENT XXXX-6453: 102.86, I guess. I'm</p> <p>2 looking at it right now. I don't know if I refresh</p> <p>3 maybe it will change.</p> <p>4 E*TRADE REP 1: Why don't --</p> <p>5 CLIENT XXXX-6453: There's a bid of 1.440.</p> <p>6 E*TRADE REP 1: Oh, in the yield?</p> <p>7 CLIENT XXXX-6453: On that screen. I have</p> <p>8 this screen for the search results.</p> <p>9 E*TRADE REP 1: Right.</p> <p>10 CLIENT XXXX-6453: And it's got a bid and</p> <p>11 an asked price.</p> <p>12 E*TRADE REP 1: Yup.</p> <p>13 CLIENT XXXX-6453: So the asked price is a</p> <p>14 higher one, obviously. I'm wondering if I can get</p> <p>15 closer to the asked price.</p> <p>16 E*TRADE REP 1: Right.</p> <p>17 CLIENT XXXX-6453: The bid price, rather.</p> <p>18 E*TRADE REP #1: Yeah. I think we'd be</p> <p>19 better off if I put in a big quote request and see if</p> <p>20 I can cut into the dealers, because that way they can</p> <p>21 bid against each other to get a better price because</p> <p>22 we're buying so many.</p>
<p style="text-align: right;">8</p> <p>1 CLIENT XXXX-6453: Uh-huh.</p> <p>2 E*TRADE REP 1: So I think I should be able</p> <p>3 to cut into that a little bit.</p> <p>4 CLIENT XXXX-6453: That's something that I</p> <p>5 can do too or is that just --</p> <p>6 E*TRADE REP 1: Well, I'm just going to</p> <p>7 forward it directly to our fixed income desk to go to</p> <p>8 the dealers. So I'm going to put that in right now</p> <p>9 for you. And then what I can do is come back to you</p> <p>10 with a best price.</p> <p>11 CLIENT XXXX-6453: Okay.</p> <p>12 E*TRADE REP 1: Is there a number that I</p> <p>13 can call you back? This usually takes about five to</p> <p>14 ten minutes just for all the dealers to bid on it.</p> <p>15 CLIENT XXXX-6453: Yes. That's (phone</p> <p>16 number).</p> <p>17 E*TRADE REP 1: What was the first three?</p> <p>18 CLIENT XXXX-6453: (Phone number).</p> <p>19 E*TRADE REP 1: And you're looking for 500</p> <p>20 of these?</p> <p>21 CLIENT XXXX-6453: Yes.</p> <p>22 E*TRADE REP 1: Okay. Let me go ahead and</p>	<p style="text-align: right;">9</p> <p>1 put it in and see if they'll give me a better time</p> <p>2 frame here.</p> <p>3 CLIENT XXXX-6453: Yeah, actually, if I</p> <p>4 wanted to put in a trade I guess I do that too when I</p> <p>5 go to the trade window. Is this going to cost me more</p> <p>6 because you're doing it?</p> <p>7 E*TRADE REP 1: No. I'm hoping it's going</p> <p>8 to actually cost you less because the concessions are</p> <p>9 built in. What I'm going to try to do is get the</p> <p>10 dealers to cut theirs and then hopefully get you a</p> <p>11 better price on them.</p> <p>12 CLIENT XXXX-6453: Uh-huh.</p> <p>13 E*TRADE REP 1: And there's no transaction</p> <p>14 costs. It's just built in from the dealers. So if we</p> <p>15 can cut into the dealers it costs you less so we can</p> <p>16 get a better price for you.</p> <p>17 CLIENT XXXX-6453: I thought there was like</p> <p>18 a credit or something that the broker like E*TRADE --</p> <p>19 E*TRADE REP 1: There's a credit?</p> <p>20 CLIENT XXXX-6453: Yeah. I forget what</p> <p>21 they call it. Isn't there like a credit or something?</p> <p>22 It's an actual markup that's stuck in the price that</p>

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April 9, 2008

## Telephonic Conversation

4 (Pages 10 to 13)

<p style="text-align: right;">10</p> <p>1 the broker puts in.</p> <p>2 E*TRADE REP 1: Yeah. That's the</p> <p>3 concession.</p> <p>4 CLIENT XXXX-6453: Concession?</p> <p>5 E*TRADE REP 1: Concession. Yeah. That's</p> <p>6 built in. But if we can cut the dealer price then we</p> <p>7 can move the concession down as well and then get you</p> <p>8 a better price overall. So --</p> <p>9 CLIENT XXXX-6453: Okay. How much is the</p> <p>10 concession?</p> <p>11 E*TRADE REP 1: On treasuries it's not very</p> <p>12 much. Especially on this many. I'm not exactly sure</p> <p>13 because I have to get the quote from the dealers and</p> <p>14 then they build it in. But hopefully it should be --</p> <p>15 CLIENT XXXX-6453: That would be 100 basis</p> <p>16 points?</p> <p>17 E*TRADE REP 1: Well, it would be one</p> <p>18 one-thousandth. But basically -- one dollar of a</p> <p>19 thousand dollar par value.</p> <p>20 CLIENT XXXX-6453: Uh-huh.</p> <p>21 E*TRADE REP #1: But we should be able to</p> <p>22 get a better price than what you're seeing on your</p>	<p style="text-align: right;">11</p> <p>1 screen --</p> <p>2 CLIENT XXXX-6453: Uh-huh.</p> <p>3 E*TRADE REP 1: -- by going this route.</p> <p>4 They're saying they should have a quote back to me</p> <p>5 within three minutes. Do you want me to give you a</p> <p>6 call right back or do you want to hold or --</p> <p>7 CLIENT XXXX-6453: Yeah. I can hold.</p> <p>8 There's no problem.</p> <p>9 E*TRADE REP #1: Okay. I'm trying to see</p> <p>10 the --</p> <p>11 CLIENT XXXX-6453: I'm just going to get a</p> <p>12 cup of coffee.</p> <p>13 E*TRADE REP 1: Sure. No problem.</p> <p>14 (Period of silence.)</p> <p>15 E*TRADE REP 1: Are you still there?</p> <p>16 CLIENT XXXX-6453: Yeah. I'm still here.</p> <p>17 E*TRADE REP 1: Okay. It looks like it's</p> <p>18 coming back now at 102.49, the price --</p> <p>19 CLIENT XXXX-6453: Yeah. That's lower.</p> <p>20 E*TRADE REP #1: -- for 500. You do have a</p> <p>21 pay a little bit of accrued interest, 15 days, which</p> <p>22 is \$335.</p>
<p style="text-align: right;">12</p> <p>1 CLIENT XXXX-6453: Excuse me?</p> <p>2 E*TRADE REP 1: I'm just trying to give you</p> <p>3 the details of it.</p> <p>4 CLIENT XXXX-6453: Oh, interest. Yeah.</p> <p>5 Okay.</p> <p>6 E*TRADE REP 1: \$335 of accrued interest</p> <p>7 for 15 days. The net money that you would pay would</p> <p>8 be \$514,259.65 for 500 of them.</p> <p>9 CLIENT XXXX-6453: How much cash do I have?</p> <p>10 It's pretty close to that.</p> <p>11 E*TRADE REP #1: Let me double-check here.</p> <p>12 CLIENT XXXX-6453: This is the IRA account,</p> <p>13 right?</p> <p>14 E*TRADE REP 1: The XXXX-6453? I see</p> <p>15 \$563,627.</p> <p>16 CLIENT XXXX-6453: Okay. Yeah. I got</p> <p>17 stuck with a lot of cash there when all my agency</p> <p>18 bonds were called.</p> <p>19 E*TRADE REP 1: Oh, really? Just here</p> <p>20 recently?</p> <p>21 CLIENT XXXX-6453: Yeah. I had these</p> <p>22 step-up bonds.</p>	<p style="text-align: right;">13</p> <p>1 E*TRADE REP 1: That happened to a lot of</p> <p>2 them. I had some clients that did that as well.</p> <p>3 Yeah, where they were stepping up to 5 and 6 percent.</p> <p>4 I know a lot of them got called.</p> <p>5 CLIENT XXXX-6453: Mm-hmm.</p> <p>6 E*TRADE REP 1: That's the price we're kind</p> <p>7 of looking at right now for the TIPS. Is that mainly</p> <p>8 what you're looking to pick up?</p> <p>9 CLIENT XXXX-6453: What did you wind up</p> <p>10 with it?</p> <p>11 E*TRADE REP #1: What did you wind up with?</p> <p>12 CLIENT XXXX-6453: What price did you tell</p> <p>13 me? I didn't write it down.</p> <p>14 E*TRADE REP #1: Oh, okay. I'll jump back</p> <p>15 to that screen. 102.46. I haven't bought them or</p> <p>16 done anything to them yet.</p> <p>17 CLIENT XXXX-6453: That's a hell of a</p> <p>18 market with --</p> <p>19 E*TRADE REP 1: It's unbelievable with all</p> <p>20 the volatility that's gone on. The original price</p> <p>21 came back at like 102.8, I believe, when I was</p> <p>22 originally looking at the prices going around.</p>

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E\*TRADE Client (XXXX-6453)

April 9, 2008

## Telephonic Conversation

5 (Pages 14 to 17)

<p style="text-align: right;">14</p> <p>1 CLIENT XXXX-6453: Yeah. I just refreshed  2 it. It's 102.78 now and the bid is 101.39. It went  3 down ever so slightly. Well --  4 E*TRADE REP 1: Hold on. I might be able  5 to --  6 CLIENT XXXX-6453: Okay. I might as well  7 go ahead with it. I'm thinking I really need some  8 inflation protection in that account.  9 E*TRADE REP 1: Okay.  10 CLIENT XXXX-6453: They're cutting rates.  11 I'm worried about inflation.  12 E*TRADE REP 1: You're worried about  13 inflation? Yeah. They could cut at another meeting.  14 They're supposed to announce again tomorrow.  15 CLIENT XXXX-6453: They're cutting rates  16 and a stimulus package and it sounds like everyone has  17 forgotten about inflation.  18 E*TRADE REP 1: Yeah. Well, it continues  19 to move around as we speak. It's actually moved to  20 102.48. So it continues to jump around.  21 CLIENT XXXX-6453: These are bids that are  22 being put in by dealers?</p>	<p style="text-align: right;">15</p> <p>1 E*TRADE REP 1: Yes. Mm-hmm. You know,  2 when you buy in round lots and they're high in  3 numbers, sometimes you can get some better prices just  4 because of the volume. So we allow them to bid  5 against each other. But the price is moving against  6 you right now because they keep -- they're going to  7 have to reset them.  8 CLIENT XXXX-6453: How long are these bids  9 good for?  10 E*TRADE REP 1: Right now they don't last  11 very long because the market is so volatile. They can  12 usually last 10 or 15 minutes. Right now it's 102.47.  13 It actually moved a little bit. But do you want to go  14 ahead and pick these up or --  15 CLIENT XXXX-6453: Okay.  16 E*TRADE REP 1: We'll do the 500,000?  17 CLIENT XXXX-6453: Yes.  18 E*TRADE REP #1: Okay. At 102.464? Does  19 that sound good to you?  20 CLIENT XXXX-6453: Okay. Yes.  21 E*TRADE REP 1: Okay. The order was  22 placed. So that money was \$514,126.</p>
<p style="text-align: right;">16</p> <p>1 CLIENT XXXX-6453: Okay.  2 E*TRADE REP 1: And you're all set on that  3 one. That should go through here shortly. What I can  4 do is give you my number as well and that way if you  5 have questions on it you can certainly give me a call  6 back directly. That way you don't have to be  7 transferred around again. And anytime you have  8 questions on fixed income or anything like that,  9 mutual funds, you can certainly give me a call and I  10 can help you take a look at anything.  11 CLIENT XXXX-6453: Okay. What's your name?  12 E*TRADE REP 1: My name was Chris. Last  13 name was --  14 CLIENT XXXX-6453: Chris?  15 E*TRADE REP 1: Chris, C-h-r-i-s. Last  16 name was Erlewine. It's E-r-l-e-w-i-n-e.  17 CLIENT XXXX-6453: Yes.  18 E*TRADE REP 1: And my number here is  19 866-789 --  20 CLIENT XXXX-6453: 866?  21 E*TRADE REP 1: Yes. 789-0714. And my  22 extension is 0056.</p>	<p style="text-align: right;">17</p> <p>1 CLIENT XXXX-6453: Okay. Do you have a  2 discount commission or --  3 E*TRADE REP 1: Yeah. I try to cut into it  4 all the time to get better quotes. That way hopefully  5 we can cut into the dealers and the concessions and  6 get you better quotes. So that way you can always  7 call us and hopefully get the best prices out there.  8 CLIENT XXXX-6453: Uh-huh. Okay. Very  9 good.  10 E*TRADE REP #1: All right? You're all set  11 on that one. Just give me a call if you have  12 questions on anything pertaining to fixed income  13 and --  14 CLIENT XXXX-6453: Yeah. While I'm talking  15 to you, I notice that E*TRADE bank has some big  16 liability because of -- I guess it's the bank that has  17 the liability, not the brokerage, but it's all the  18 same company, right?  19 E*TRADE REP 1: That's correct. Mm-hmm.  20 CLIENT XXXX-6453: Is there any risk to any  21 of these brokerage accounts because of that?  22 E*TRADE REP 1: Well, I mean, we have our</p>

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E\*TRADE Client (XXXX-6453)

April 9, 2008

## Telephonic Conversation

6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 insurance. I mean, first off, most of it has gone by 2 the wayside because we did sell most of our risky 3 assets and a big chunk of our home equity lines of 4 credit. So we actually expect to turn a profit by mid 5 this year again. But for insurance purposes you do 6 have up to 500,000 in each account and then we have 7 third party insurance on top of that which is an 8 aggregate amount of 600 million by London insurers. 9 CLIENT XXXX-6453: Yeah. 10 E*TRADE REP 1: And then of course your 11 bank accounts it's 100,000 FDIC insurance as well. 12 CLIENT XXXX-6453: Yeah. That one was 13 worrying me, because with all those bonds being called 14 and whatnot the other day I noticed my cash balance 15 was up to about a million. But I think that's all in 16 the bank, right, in that SweepMax bank account? So I 17 assume that's owned by the bank, right? 18 E*TRADE REP 1: Are you talking about your 19 trust account or -- 20 CLIENT XXXX-6453: No. In this particular 21 account, the cash balances are swept into a bank 22 account called SweepMax?</p>	<p style="text-align: right;">19</p> <p>1 E*TRADE REP 1: Yes. A money market. Yes. 2 CLIENT XXXX-6453: Right. That's run by 3 the bank, right? They invest those balances in 4 mortgages or whatever? 5 E*TRADE REP 1: Correct. Yeah. I mean, 6 they pay you interest off of the investments in the 7 money market. Correct. 8 CLIENT XXXX-6453: Yeah. That's why I 9 figured I'd better get rid of that cash balance quick. 10 E*TRADE REP #1: You'd rather it be in 11 treasuries, huh? 12 CLIENT XXXX-6453: Well, I mean, you say 13 that the bank has gotten rid of most of that. I 14 looked at their balance sheet and it's got about \$25 15 billion in mortgage obligations of some kind. I don't 16 know what the hell it is. Maybe only part of them are 17 the risky ones. I don't know. 18 E*TRADE REP #1: Yeah. I mean, we sold \$3 19 billion a while back, about two months ago, back in 20 November, and then we sold another \$3 billion in home 21 equity lines. But the biggest part was the \$3 billion 22 with the asset backed securities that we got rid of.</p>
<p style="text-align: right;">20</p> <p>1 Those were the ones that we were continuing to take 2 write-downs on. And we just wanted to knock those off 3 our books. So hopefully we won't have to take any 4 more write-downs going forward. 5 CLIENT XXXX-6453: Yeah. Okay. I guess 6 I'm safe. 7 E*TRADE REP 1: Okay. Well, if you have 8 questions on it give me a call back and I can talk to 9 you about that as well. 10 CLIENT XXXX-6453: Okay. One thing you 11 might want to look at on the balance sheet is I think 12 the net assets are somewhere around \$3 billion and 13 two-thirds of that is goodwill, which I kind of doubt 14 if it's worth \$2 billion -- 15 E*TRADE REP 1: Huh. 16 CLIENT XXXX-6453: -- as a sheet looker. 17 E*TRADE REP 1: \$2 billion of goodwill, 18 huh? 19 CLIENT XXXX-6453: Okay. 20 E*TRADE REP #1: Okay. Well, we'll -- you 21 know, I'm pretty confident that hopefully we took our 22 big write-downs here this last quarter that we just</p>	<p style="text-align: right;">21</p> <p>1 announced last week. So hopefully we're moving in the 2 right direction now. 3 CLIENT XXXX-6453: Yeah. Well, my former 4 advisor who -- I don't know if he quit or was laid 5 off. But he's over at Bank of America now. 6 E*TRADE REP 1: Oh, okay. 7 CLIENT XXXX-6453: And he's trying to talk 8 me into moving all my money over there. And he's, you 9 know, telling me how unsafe E*TRADE is. But in any 10 event -- 11 E*TRADE REP 1: Sure. 12 CLIENT XXXX-6453: I don't really believe 13 him. And if I did move it I don't think I'd move it 14 to that particular bank either. 15 E*TRADE REP 1: Right. Yeah. I can 16 understand that. 17 CLIENT XXXX-6453: Okay. 18 E*TRADE REP 1: No. We're in good shape, 19 so hopefully we're getting back to where we need to 20 be. Hopefully we'll turn the corner and turn up some 21 into a profit here in '08. I know there's been a big 22 setback due to the bank side and their investments</p>

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E\*TRADE Client (XXXX-6453)

April 9, 2008

## Telephonic Conversation

7 (Pages 22 to 24)

<p style="text-align: right;">22</p> <p>1 over there. But the retail side has been very strong.  2 And that's what the focus is on now. So hopefully  3 we'll build upon that.  4 CLIENT XXXX-6453: Are you buying the  5 stock?  6 E*TRADE REP 1: I have ownership in it. I  7 mean, obviously as an employee I have a lot of stock  8 option plans and things of that nature. So I am  9 invested in the company to that extent.  10 CLIENT XXXX-6453: Okay. Very good.  11 E*TRADE REP #1: I have full confidence in  12 it. It seems like things are starting to move back  13 and hopefully we're closer to the bottom with that  14 mortgage crisis than we have been in the past,  15 hopefully.  16 CLIENT XXXX-6453: Well, yeah. I think the  17 central banks are not going to let it get too far out  18 of hand.  19 E*TRADE REP 1: No. No. We already see  20 them stepping in pretty majorly with some liquidity  21 into different things. So -- especially in an  22 election year, no one wants to dive into a recession.</p>	<p style="text-align: right;">23</p> <p>1 That's not going to look good on either side right  2 now. So I think they'll do everything in their power  3 to prevent that. And of course no one wants that to  4 happen on their watch as well when you're on the fed  5 side, regardless if you created it or not. So --  6 CLIENT XXXX-6453: Okay. Very good.  7 E*TRADE REP #1: Okay? All right. Well,  8 thank you, (Client XXXX-6453), and give me a call if  9 you have any questions and we'll certainly be in  10 touch.  11 CLIENT XXXX-6453: Okay. Very good.  12 E*TRADE REP #1: Okay.  13 CLIENT XXXX-6453: Bye-bye.  14 E*TRADE REP 1: Thank you, sir. Bye.  15 (Call ends.)  16  17  18  19  20  21  22</p>
<p>1 UNITED STATES OF AMERICA )  2  3 DISTRICT OF COLUMBIA )  4 I, JONATHAN WONNELL, a Notary Public in and  5 for the District of Columbia, do hereby certify that  6 the within transcript is a true and accurate record of  7 the taped telephone conversation as provided by  8 counsel in the above-entitled matter.  9 I further certify that I am not a relative,  10 employee, attorney or counsel of any of the parties to  11 this action and that I am in no way interested in the  12 outcome of this matter.  13 IN WITNESS WHEREOF, I have hereunto set my  14 hand this _____ day of _____, 2008.  15  16  17  18  19 JONATHAN WONNELL  20  21 My Commission expires:  22 October 1, 2012</p>	

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E\*TRADE Client (XXXX-6453)

January 29, 2008

Telephonic Conversation

24

1 UNITED STATES OF AMERICA )

2

3 DISTRICT OF COLUMBIA )

4 I, JONATHAN WONNELL, a Notary Public in and  
5 for the District of Columbia, do hereby certify that  
6 the within transcript is a true and accurate record of  
7 the taped telephone conversation as provided by  
8 counsel in the above-entitled matter.

9 I further certify that I am not a relative,  
10 employee, attorney or counsel of any of the parties to  
11 this action and that I am in no way interested in the  
12 outcome of this matter.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 14<sup>th</sup> day of April, 2008.

15

16

17

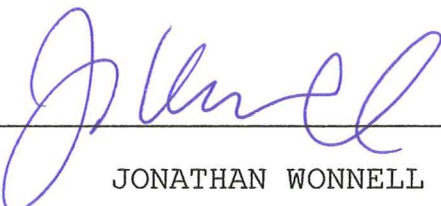
18

19

20

21 My Commission expires:

22 October 1, 2012

  
JONATHAN WONNELL

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